

MINUTES OF THE CITY PLANNING COMMISSION
J. MARTIN GRIESEL CONFERENCE ROOM
January 7, 2005
9:00AM

CALL TO ORDER

Donald Mooney called the meeting to order at 9:03am, with the following present:

Commission Members:

Terry Hankner, Caleb Faux, Curt Paddock, Deborah Holston (for Valerie Lemmie), Jacquelyn McCray and Donald Mooney. Absent: James Tarbell.

Community Development and Planning Staff:

Margaret Wuerstle, Lenny Adkins, Steve Briggs, Rodney Ringer, Felix Bere, Jennifer Walke

Law Department:

Julia Carney

SWEARING IN OF NEW COMMISSION MEMBER

Mr. Mooney swore in Mr. Curt Paddock

ELECTION OF OFFICERS

The following members were nominated by Ms. Hankner, and seconded by Mr. Mooney for:

Chairman	Caleb Faux
Vice Chairman	Jacquelyn McCray

The following member was nominated by Mr. Mooney, and seconded by Ms. McCray for:

Chairman Pro Tempore	Terry Hankner
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Mr. Mooney moved that if there were no further nominations that all in favor say aye.

Vote: All ayes (6-0), election complete

ASSUMPTION OF OFFICES

New Officers assumed duties

MINUTES

Minutes of the December 17, 2004 Meeting were presented.

Motion:	By Ms. Hankner to accept the minutes as written
Second:	Ms. McCray
Vote:	All ayes (6-0), motion carried

CONSENT ITEMS

ITEM #1 --Sale of Bard Alley between Wade Street and Bauer Avenue to Revelation Missionary Baptist Church.

ITEM #2 – Ordinance authorizing the City Manager to enter into a ten-year lease with Seven Hills Neighborhood Houses, Inc. for part of the property known as the Sands Playground.

ITEM #3 – Ordinance authorizing the sale of surplus City-owned property located at 1916 Auburn Street, commonly known as Hamilton County Auditor’s parcel Number 87-4-120 to Gregory and Kristine Sturgeon

ITEM #4 – Ordinance Accepting Storm Sewers traversing the Vine Street Cemetery.

ITEM #5 – Ordinance Accepting Storm Sewer Easement in accordance with a plat entitled “St. Aloysius Orphanage Combination Sewer Easement, Storm Sewer Easement and Drainage Easement Plat.”

ITEM #6 – Ordinance Accepting Storm Sewer Easement in accordance with a plat entitled “Storm Sewer Easement Plat, Davenport Ave. Condominium.”

ITEM #7 – Ordinance accepting and confirming the dedication of certain real property to public use for street purposes as additions to Ridge Avenue, Alamo Avenue and Calvert Street.

ITEM #7A – Letter from Leon A. Meyer, representing New Thought Unity Center Church, requesting a Zone Change study on a property that was rezoned as part of the Zoning Code update. They requested that the study be done without charging the \$300.00 fee.

Motion: Ms. Hankner motioned to approve consent items 1 – 7A
Second: Ms. McCray
Vote: All ayes (6-0), motion carried

DISCUSSION ITEMS

ITEM #8 – Expiration of Interim Development Control (IDC) district #62 located along Edwards Road in the Community of Hyde Park.

Community Development and Planning Analyst, Jennifer Walke presented a report and recommendation on IDC #62 which replaced a T-zone that was established in the early 1970s. No restrictions or guidelines for application review were developed when the T-Zone was created. The underlying zoning under the Old Code was R-4. The recommendation of the City is to allow the IDC to expire.

Carl Uebelacker, representing the Hype Park Community Council, agreed that IDC #62 should be allowed to expire, when he addressed the Commission. No one wished to speak in opposition.

Motion: Mr. Mooney moved that IDC #62 be allowed to expire
Second: Ms. Holston
Vote: All ayes (6-0), motion carried

At 9:15 am, Mr. Tarbell arrived

ITEM #9 – Extension of Interim Development Control (IDC) districts # 60, #63 and #64 in the Community of Hyde Park.

Community Development and Planning Analyst, Jennifer Walke presented a report and recommendation on extending Interim Development Control (IDC) districts #60, #63, and #64 in Hyde Park. The City of Cincinnati adopted a new Zoning Code last year that established new zoning designations. Some of the

new zoning designations in Hyde Park were controversial, so IDCs #60, #63, and #64 were put in place by Council to protect the areas from adverse development while a zoning study was performed to determine the best use of the properties. To date, the zoning study has not been performed. When the IDCs expire on February 13, 2005 the underlying zoning will prevail.

DESCRIPTION:

IDC #60: IDC #60 had controversy surrounding the zoning density of the area. The underlying zoning of the area is Residential Mixed (RMX)—which is a multi-family designation that allows for 1-3 dwelling units per parcel. Some residents expressed concern that RMX was too dense and asked for a zoning study to determine the feasibility of rezoning the area to RMX-Large—which would allow for 1 or 2 dwelling units per parcel.

IDC #63: IDC #63 was a R-4 “T-zone” (Transitional Zone) under the old Code that buffered residential from commercial. The area is currently zoned Commercial Community- Auto (CC-A) and houses the Tricon/Amercian Scaffolding Company.

IDC #64: The parcel that is IDC #64 serves as a buffer between commercial CC-A and SF-6 residential districts. Under the old Code the parcel was a “T-zone”. The area is currently zoned CC-A and contains a single-family residential structure.

FINDINGS:

There was overwhelming community support for extending all three IDCs to allow for zoning studies to be performed. The only opposition to the extension concerns IDC #63, because the property owners are in negotiations with a potential developer to locate a Bob Sumerel Tire Company on the property. Those in favor of allowing IDC #63 to expire were supporters of the Bob Sumerel Tire development proposal. A preliminary site plan for the development was presented to the Hyde Park Community Council where it was received with opposition. The Hyde Park Community Council and the owners of Bob Sumerel Tire are discussing compromises to the proposed site plans. Petitioners for the Bob Sumerel Tire development would like to commence demolition on the property and are concerned that extension of the IDC will delay construction.

CONCLUSION:

Many Hyde Park residents welcome a zoning study to determine the best uses of the IDCs in the neighborhood. Since staff received only comments in favor of extending IDC #60 and #64 and no comments in favor of expiration, both IDC #60 and #64 should be extended.

Because IDC #63 has a pending development and some residents question its compatibility with the surrounding residential areas, IDC #63 should be extended to protect the area from adverse development until a permanent zoning designation can be determined.

RECOMMENDATION:

The Community Development and Planning Department staff recommends that the City Planning Commission take the following action: extend Interim Development Control districts # 60, #63 and #64 in Hyde Park for 6 months, until August 13, 2005 to allow for a zoning study.

Carl Uebelacker, representing the Hyde Park Community Council, agreed that IDCs #60, #63 and #64 should be extended, when he addressed the Commission. No one wished to speak in opposition.

Asst. City Solicitor, Julia Carney cautioned the Commission that in order to extend the IDCs, the Planning Commission has to make three findings in order to make an affirmative recommendation: 1)

that it is a complex study, 2) that the study is incomplete, and 3) a proposed change in use, a new structure, or demolition that would be inconsistent with the preliminary objective or findings that were approved by the Planning Commission. Those findings are needed for each IDC.

After discussion, the Commission determined that for all IDC's the following findings were applicable:

1. The study of the proposed amendment has proven to be extraordinarily complex by reason of unusual conditions in the district.
2. The Zoning study and any proposed map amendments for the IDC's have not been completed.
3. There is a prospect of change in use, construction of new structures, alteration or demolition of existing structures that would be inconsistent with preliminary objectives for the areas.

Motion: Mr. Mooney motioned that IDCs #63 and #64 be extended with the findings as discussed and determined by the Commission.

Second: Ms. Hankner

Vote: All ayes (7-0), motion carried

Motion: Ms. Hankner motioned that IDC #60 be extended with the findings as stated by the Commission.

Second: Ms. McCray

Vote: All ayes (7-0), motion carried

ITEM #10 – Report and recommendation on a six-month extension of the Interim Development Control (IDC) district #61 in the Oakley community.

Senior City Planner, Felix Bere presented a report and recommendation on a six-month extension of IDC #61 – Erie Avenue within the Oakley Neighborhood.

BACKGROUND

IDC #61 will expire on February 13, 2005, unless otherwise extended by City Council. The IDC District was established to temporarily control land use changes within an area while zoning or text amendment studies are in process.

STATUS OF STUDY

The Staff has not analyzed the existing zoning and impacts on the area. However, Episcopal Retirement Homes (ERH) and Forest Hill Drive Association embarked on a development plan that was approved by William Langevin, Director of Buildings and Inspections in April 2004. Construction based on the development plan will commence in February and be completed in October 2005. Although the parties involved reached an agreement, the abutting property owners favor extending the IDC to assure adherence to the agreement. The expectation is an extension of the IDC for six months will enable ERH to obtain all necessary approvals and permits for the plans and proceed with construction as agreed upon.

RECOMMENDATION

The DCDP staff recommends that the City Planning Commission take the following actions:

1. Approve the report as the required documentation under Section 1431-13 of the Zoning Code as the findings for the extension of Interim Development Control District No. 61 – Erie Avenue, Oakley.

2. Recommend that City Council extend Interim Development Control District No. 61 Erie Avenue, Oakley for six months until August 13, 2005 for properties on the east side of Forest Hill Drive south of Erie Avenue in Oakley.

Joe Trauth, representing the Forest Hills Property Owners Association, agreed with the Staff's recommendation. However, they wanted the project to move forward.

Joe Dehner, representing, the Episcopal Retirement Homes, also agreed with the staff recommendation. However, he wanted to make it clear that the review, decisions, and approvals for the applications that were pending before the adoption of the new Zoning Code (including IDC #61) were to be made in accordance with the Zoning Code in effect at the time the application was made.

After discussion the Commission determined:

1. The study of the proposed amendment has proven to be extraordinarily complex by reason of unusual conditions in the district.
2. The Zoning study and proposed map amendments for the IDC's have not been completed.
3. There is a prospect of change in use, construction of new structures or alteration or demolition of existing structures that would be inconsistent with preliminary objectives for the areas.

Motion: Mr. Mooney motioned to extend IDC #61 six months, with the findings as discussed and determined by the Commission and also providing that the applicant conforms with the agreement of the parties and the approvals of Mr. Langevin, the applicant will not to come back to the Planning Commission for additional approvals.

Second: Ms. Hankner

Vote: All ayes (7-0), motion carried

ITEM #11 – Zoning Code Text Amendment to confer upon the Zoning Hearing Examiner the ability to grant a Variance or Special Exception administratively without a public hearing in limited circumstances.

Mr. Steven Kurtz, Zoning Hearing Examiner, requested that the following changes be made to the Zoning Code text.

1445-09. Parties Entitled to Seek Variances, Special Exceptions and Conditional Uses.

Any property owner or authorized agent of the owner of the property affected may apply for variances, special exceptions and conditional uses. Any City agency or department may apply for a variance or special exception if the strict application of the zoning code conflicts with the application of public safety and health requirements..

1445-11. Procedures for Application for Variances, Special Exceptions and Conditional Uses.

(d) **Public Hearing Waiver**(1) The examiner may waive.....

(2) City Agency or Department. The examiner may waive the public hearing requirement on applications for a variance or special exception when a City agency or department makes the request where the strict application of the zoning code would be detrimental to the public health or safety. The City agency or department must document the specific detriment to the public health or safety in writing to the Director of Buildings and Inspections prior to zoning approval being issued.

Martha Kelley, Jeff Stine, and Michael Moore provided background for the request.

BACKGROUND

The Department of Buildings and Inspections received a permit application for construction of a new building. The Zoning Code required a landscaped berm to separate the proposed building in CC-A district from the adjacent SF-6 zoned property. The site plan was reviewed, determined to be in compliance with the Zoning Code and circulated for review and approval to various City agencies as required for obtaining a building permit.

During the review process, the Department of Transportation and Engineering objected to approval of the application. The objection was based on safety concerns related to the obstruction of necessary driveway and parking lot access sight lines by the landscaped berm required for zoning approval. Therefore, compliance with the Zoning Code caused non-compliance with the safety restrictions required for approval by the Department of Transportation and Engineering.

The conflict was internal to the City's review process and not caused by the applicant. In service to the client, both the Buildings and Inspections Department and Transportation and Engineering Department cooperatively sought a Special Exception to the Buffer Yard requirements of the Zoning Code. Since the need for the Special Exception was internal to the City and not due to the applicant, both departments requested that a Special Exception be approved administratively, without a public hearing, in order to expedite the process for the client. Unfortunately, there is no mechanism in the Zoning Code to allow for such a procedure.

While the case outlined above was resolved, future conflicts between the requirements of the Zoning Code and condition-specific application of public safety standards may arise.

SOLUTION

When non-compliance with the requirements of the Zoning Code is necessitated by a conflicting safety requirement, the Zoning Hearing Examiner should be granted the ability to approve a Variance or Special Exception administratively, without invoking the requirements of the public hearing process. The purpose of the recommendation is to:

- Retain the integrity of the approval process, as the Zoning Hearing Examiner is the official authorized to grant Variances and Special Exceptions.
- Expedite the approval process for the applicant when the issue of non-compliance is not the applicant's initiative.
- Retain the ability of all vested parties to appeal the Zoning Hearing Examiner's decision.

RECOMMENDATION

The staff of the Department of Buildings and Inspections and the Department of Transportation and Engineering requests the approval of the proposed text to the Zoning Code.

Carl Uebelacker, addressed the Commission with the concern, that without the notice of a public hearing the communities do not know that an administrative remedy has taken place.

Gerry Kraus, North Avondale Neighborhood Association, also addressed the concern of the lack of notification. She stated that the N. Avondale Neighborhood Association is currently in litigation for this very issue.

Mr. Kurtz proposed inserting language requiring that all abutting property owners and community councils be notified of the Hearing Examiner's decision.

Mr. Paddock had concern with the proposed change in text because the group knows the intent but not the specific language proposed by Mr. Kurtz.

Motion:	Ms. Hanker motioned for the approval of the amended language to include a notice from the Hearing Examiner of the decision to the abutting property owners and the Community Councils and such notice is to state the deadline date to file an appeal.
Second:	Ms. Holston
Vote:	7 ayes

ITEM #12 – Zoning Code Text Amendment §1409-09 Development Regulations – Commercial Districts; Drive-through facilities.

After discussion, it was recommended that this item be tabled for further work, on clarification of the charts in the Development Regulations.

ITEM #13 – Zoning Code Text Amendment §1409-07 Use Regulations- Commercial Subdistricts; Accessory Uses.

Asst. City Solicitor Julia Carney recommended language changes to this amendment. After discussion it was determined that items 13 and 14 would be held until the next meeting.

ITEM #14 -- New Definition §1401-01– Drive-through Facility/establishments

Held till next meeting

ITEM #15 – Chapter 1431 - Interim development Control Overlay Districts; Timing requirements.

As originally written, the timing is difficult for Staff to meet since applications received at the Permit Center may not be received by the Planning Staff for several days. The experience has shown that for staff to meet the 15-day requirement, extra mailings are required. However, if the time is changed to 30 days, Planning Staff will be able to file the required report with the Planning Commission in an Agenda Package mailed for the regularly scheduled meetings. Additionally, the language of the Public Hearing was changed to avoid having to schedule additional meetings to comply with the 30-day requirement.

Motion:	Ms. Hankner motioned that the text change be approved as presented
Second:	Ms. McCray
Vote:	All ayes (7-0), motion carried

OTHER BUSINESS

ITEM #16 – Re-examination of CN-P zoning on Linwood Avenue around Mt. Lookout Square as requested by the Commission at the December 3, 2004 meeting. This item was postponed at the December 17, 2004 meeting.

Sr. City Planner, Rodney Ringer presented a report and recommendation on the request to re-examine CN-P zoning on Linwood Avenue.

BACKGROUND:

The property at 3145 Linwood Avenue is a two-family building, which is zoned SF-6 Single-family. The applicant John P. Cody and Catherine Kemble Trustees of the Eastside Roofing-Siding-Windows Company, requested that staff rezoned their property to CN-P to allow the property to be included in the Mt. Lookout Business District. Staff made the changes to the property as part of the Zoning Code rewrite process. Properties were zoned according to their existing land use.

The building is located on the edge of the Mt. Lookout Business District next to Jiffy Lube. The building is screened from Jiffy Lube by a privacy fence & vegetation. All of the properties north of the Jiffy Lube are located in the SF-6 Single-family District. From the built environment the property appears to be consistent with those residential properties adjacent to it. Mr. Cody's property was previously zoned O-1A Suburban Low-Density Office District, which allowed single-family, two-family, and multi-family uses as well as offices devoted to business management and professional services. The property is currently occupied by a permitted nonconforming use; a business office and rental property. The property can continue to operate in its current state as long as the property meets the requirements of the City of Cincinnati Zoning Code, Chapter 1447 Nonconforming Uses and Structures.

ISSUES:

Mr. Cody requested a zone change for his property to continue the use of his nephew's Eastside Roofing-Siding-Windows Company. Mr. Cody stated that the business is used to conduct phone calls, store paper work/ files, and to meet clients. Equipment for the company is stored at 3757 Paxton Road, which is the address to his real estate office. During the presentation of Mr. Cody's request to the Commission, Mr. Cody stated that other properties similar to his had been zoned commercial but that his was zoned residential. He further stated that he felt the decision to zone his property to residential was arbitrary. Consequently, Mr. Faux requested that Staff present zoning maps on the entire Mt. Lookout Square area, so that the Commission could re-examine the zoning designations applied to this area.

CONCLUSION:

The Commission concluded that the zoning designations applied to the Mt. Lookout Square area were appropriate and that the designations applied to each property were not arbitrary or capricious, but instead well thought out and justified.

ITEM #17 - Appointment of Representatives to the Hamilton County Regional Planning Commission

This item was held

However, appointments to the Hamilton County Planning Partnership were:

Ms. Margaret Wuerstle
Mr. Curt Paddock
Mr. Jim Tarbell
Ms. Deborah Holston
Ms. Katherine Keough-Jurs, Alternate

Motion:	Ms. Hankner motioned to make the appointments to the Hamilton County Planning Partnership
Second:	Ms. McCray
Vote:	All ayes (7-0). Motion carried

ADJOURN

Motion: Ms. McCray motioned that the Commission adjourn
Second: Ms. Holston
Vote: All ayes (7-0), motion carried

Margaret A. Wuerstle, AICP
Chief Planner
Department of Community
Development & Planning

Date: _____

Caleb Faux, Chair
City Planning Commission

Date: _____